

REMARKS/ARGUMENTS

Claims 1 - 22 are pending in the instant application. In the Office Action mailed July 21, 2005 the Examiner rejects Claims 1 - 22 under 35 U.S.C. §§ 102 and 103 and objects to Claims 13 and 19 - 22. Based on the remarks made herein, Applicants respectfully request that the rejections and objections be withdrawn and that the application be passed to allowance.

Amendments to the Specification

Applicants have amended the Specification to insert the serial number of a concurrently filed patent application. Applicants submit that no new matter has been added by way of these amendments.

Amendments to the Claims

Applicants have amended Claim 13 to address the Examiner's claim objection. The amendments to the claims are supported by page 8, lines 29 -33 and other portions of the Specification as filed. Applicants submit that no new matter has been added by way of these amendments.

Objections to the Drawings

In the Office Action mailed July 21, 2005, the Examiner objects to the drawings under 37 CFR 1.83(a), the Examiner states that "[t]he drawings must show every feature of the invention specified in the claims. Therefore, in Claim 19 the unitary waist elastic element attached to the front waist region must be shown or the feature(s) canceled from the claims. Claims 20 – 22 are objected to as dependent on Claim 19."

Applicants respectfully submit that the drawings do show every feature of the invention specified in the claims. The unique feature of Claim 19 is, "wherein the unitary waist elastic element is attached to the front waist region, and wherein the waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article to provide a pair of ears, and wherein the waist elastic element inboard portion attached to the front waist region shirrs the front waist region." All the features of the claim are shown in the figures. Specifically, the front waist region is shown in Figs. 1 and 2 and is labeled as "22". Moreover, Applicants respectfully submit that Figs. 3 - 6 depict elements ascertainable to one of ordinary skill in the art as the front waist region. Accordingly, the objection to the drawings under 37 CFR 1.83(a) is obviated and should be withdrawn. Likewise the objection to claims 20 -22 should also be withdrawn.

In the Office Action mailed July 21, 2005, the Examiner objects to the drawings under 37 CFR 1.84(l) and 1.84(p), specifically the notice of draftsperson's review indicates "poor line quality" in parts, and "number and reference characters not plain and legible" in parts. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are submitted with this response addressing these issues. Applicants submit that no new matter has been added by way of these corrected drawing sheets. Likewise the objection to the drawings should be withdrawn.

Claim Objection

In the Office Action mailed July 21, 2005, the Examiner objects to Claim 13 under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. By virtue of the amendments made herein, Applicants believe the Examiner's objection has been addressed and Applicants respectfully request that the Examiner withdraw the objection to Claim 13.

Rejections Under 35 U.S.C. § 102

The Damaghi patent does not disclose each and every element of the claimed invention.

In the Office Action mailed July 21, 2005, the Examiner rejects Claims 1-3, 5, 8-10, 12-16 and 18 under 35 U.S.C. § 102(b) as being unpatentable over US 6,306,121 filed September 8, 1998 by Damaghi et al. (herein "the Damaghi patent"). This rejection is respectfully **traversed**.

The Damaghi patent is directed to an absorbent article having an elasticized band member attached to the back waist portion and has a left hand band portion and a right hand band portion, both extending angularly from the area of the back waist portion toward the fastening region. The ends of each of the band portions are adapted to be engaged to one another and to the fastening region, and they may be tensioned to securely fasten the absorbent article to the body of the wearer. See Abstract.

In order to be anticipatory, a reference must explicitly or implicitly disclose each and every element of the claimed invention. Independent claims 1 and 15 of the present invention are directed to a disposable absorbent article. In particular, independent claims 1 and 15 of the present invention include, *inter alia*, an absorbent core and an outer cover, wherein the absorbent core and the outer cover define a chassis; and a unitary waist elastic element defining a waist elastic element inboard portion and a pair of unitary waist elastic element outboard portions, where the unitary waist elastic

element outboard portions extend laterally beyond the chassis of the absorbent article, and where the unitary waist elastic element inboard portion shirrs the back waist region.

The Damaghi patent does not disclose, explicitly or implicitly, a unitary waist elastic element where the unitary waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article, and where the unitary waist elastic element inboard portion shirrs the back waist region. The Examiner notes that "the first embodiment of Damaghi is stated to include Figs. 1-14." The Examiner states that "the unitary waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article to provide a pair of ears (Figs. 1, 3, and 9). The unitary waist elastic element inboard portion shirrs the back waist region (see Fig. 1)."

A closer examination of the Damaghi patent shows that the elastic band 115 of the first embodiment (Figs. 1-14) of the Damaghi patent does not extend beyond the chassis, contrary to the Examiners belief. Specifically, Fig. 12 shows backsheet 109 (outer cover) and elastic band 115 being coextensive, the elastic band 115 does not extend laterally beyond the chassis. Further, the elastic band 115 of the Damaghi patent (Figs. 1- 22) does not shirr the back waist region. Fig. 1 of the Damaghi patent is a perspective view of a pant-type absorbent article. Fig. 2 is a plan view of the front of the absorbent article shown in Fig. 1. Fig. 3 is a stretched plan view of the absorbent article in Fig. 1. (Col. 4, lines 8 – 22). Applicants contend the elastic band 115 of the Damaghi patent does not shirr the back waist region as can be easily seen in Fig. 2. Further, any visual difference between Fig. 1 and Fig. 2 is a function of the difference between a perspective view and a plan view, and not a function of the design of the absorbent article.

For at least these reasons, Applicants respectfully submit that independent claims 1 and 15 are patentable over the Damaghi patent. Moreover, claims 2, 3, 5, 8-10, 12-14, 16 and 18, which depend from independent claims 1 and 15, are also accordingly patentable over the Damaghi patent.

Further, and with regard to claims 2, 8 and 15, the Examiner believes that "Damaghi teaches the unitary waist elastic element being attached to the interior surface of the article... (see Damaghi, Fig. 1." Applicants respectfully disagree. Fig. 1 illustrates the elastic band 115 attached to an exterior surface of the article. Accordingly, for at least these additional reasons, applicants respectfully submit that claims 2, 8 and 15 are patentable over the Damaghi patent.

Further, and with regard to claim 14, the Examiner believe that the Damaghi patent shows, *inter alia*, a second unitary waist elastic element attached to the front waist region, where the unitary

elastic element outboard portions extend laterally beyond the chassis to provide a second pair of ears (see reference number 127 of Fig. 3). The Damaghi patent does not show a second unitary waist elastic element which extends laterally beyond the chassis. As claimed in independent claim 1 and 15, "the absorbent core and the outer cover define a chassis." The features of the Damaghi patent described by the Examiner do not extend laterally beyond the chassis; specifically they do not extend laterally beyond the outer cover as shown in Figs. 1, 3A, 5, 7 and 12. Accordingly, for at least these additional reasons, applicants respectfully submit that claim 14 is patentable over the Damaghi patent.

For at least the reasons presented herein, Applicants respectfully submit that the subject matter of claims 1 - 3, 5, 8 - 10, 12 - 16 and 18 is patentable over the Damaghi patent and that the rejection should be withdrawn.

The Meyer publication does not disclose each and every element of the claimed invention.

In the Office Action mailed July 21, 2005, the Examiner rejects Claims 1-3, 6-13, and 15-18 under 35 U.S.C. § 102(e) as being unpatentable over US Patent Publication US 2004/0122404 filed December 20, 2002 by Meyer et al. (herein "the Meyer publication"). This rejection is respectfully **traversed**.

The Meyer publication is directed to an elastic laminate having an expandable facing layer, e.g., a nonwoven web with off-axis perforations, and an elastic film layer produced to provide a preferential direction of extendibility and retraction in the laminate. The elastic laminate is particularly useful as a waist area panel in disposable pant-like garments. See Abstract.

In order to be anticipatory, a reference must explicitly or implicitly disclose each and every element of the claimed invention. Independent claims 1 and 15 of the present invention are directed to a disposable absorbent article. In particular, independent claims 1 and 15 of the present invention include, *inter alia*, an absorbent core, an outer cover, wherein the absorbent core and the outer cover define a chassis; and a unitary waist elastic element defining a waist elastic element inboard portion and a pair of unitary waist elastic element outboard portions, where the unitary waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article, and where the unitary waist elastic element inboard portion shirrs the back waist region.

The Meyer publication does not disclose, explicitly or implicitly, a unitary waist elastic element where the unitary waist elastic element inboard portion shirrs the back waist region. The Examiner believes the Meyer publication discloses "[t]he unitary elastic element inboard portions shirrs the back waist region (see Fig. 1 and paragraph 50)."

A closer examination of the Meyer publication shows that the waist elastic 38 does not shirr the back waist region. Paragraph 37 states "FIG. 1 illustrates a limited use pant-like garment utilizing an elastic laminate of the present invention." The back waist region shown in Fig. 1 is laid out flat. The back waist region is not shirred in any way. Further, the fifth sentence of Paragraph 52 states, "[t]he side panels 42 in the exemplary aspect are formed integrally with the waist elastic 38 in order to be expandable." (emphasis added). The second sentence of Paragraph 54 states, "[a]ny expandable areas of the diaper 20 may utilize the elastic composites set forth herein for increased functionality and aesthetics." (emphasis added). Applicants contend the waist elastic 38 of the Meyer publication does not shirr the back waist region. Instead, the waist elastic 38 provides an expandable area of the diaper.

For at least these reasons, Applicants respectfully submit that independent claims 1 and 15 are patentable over the Meyer publication. Moreover, claims 2, 3, 6-13, 16 and 18, which depend from independent claims 1 and 15, are also accordingly patentable over the Meyer publication.

For at least the reasons presented herein, Applicants respectfully submit that the subject matter of claims 1 - 3, 5, 6 - 13 and 15 - 18 is patentable over the Meyer publication and that the rejection should be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

The Damaghi patent fails to teach or suggest all of the claim limitations.

In the Office Action mailed July 21, 2005, the Examiner rejects Claims 4, 6, 11 and 17 under 35 U.S.C. § 103(b) as being unpatentable over the Damaghi patent. This rejection is respectfully **traversed**.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine

reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

Dependent claims 4, 6, 11 and 17 depend from independent claims 1 and 15. As stated above, Applicants respectfully submit that claims 1 and 15 are patentable over the Damaghi patent. For at least this reason, Applicants respectfully submit that claims 4, 6, 11 and 17 are patentable over the Damaghi patent and that the rejection should be withdrawn.

The combination of the Damaghi patent and the Glaug publication fail to teach or suggest all of the claim limitations.

In the Office Action mailed July 21, 2005, the Examiner rejects claim 7 under 35 U.S.C. § 103(b) as being unpatentable over the Damaghi patent in view of US Patent Publication US 2005/0010188 A1 filed July 10, 2003 by Glaug et al. (herein "the Glaug publication"). This rejection is respectfully **traversed**.

The Glaug Publication is directed to a disposable absorbent article. The article has a pair of leg openings, each of the leg openings has a high-cut concave edge portion at the front section, and a convex edge portion at the rear section. See Abstract.

Claim 7 depends from independent claim 1 and further recites that the unitary waist elastic element further defines a unitary waist elastic lower edge and the unitary waist elastic element lower edge defines a "w" shape. As discussed above the Damaghi patent does not disclose a unitary waist elastic where the unitary waist elastic element inboard portion shirrs the back waist region. Applicants assert that the Glaug publication fails to correct the deficiencies of the Damaghi patent. That is, the Glaug publication fails to teach or suggest a unitary waist elastic where the unitary waist elastic element inboard portion shirrs the back waist region. Thus, the combination of references cited by the Examiner cannot be said to render the claimed invention obvious. For at least this reason, Applicants respectfully submit that claim 7 is patentable over the Damaghi patent in light of the Glaug publication and that the rejection should be withdrawn.

The combination of the Damaghi patent and the Toyoshima publication fail to teach or suggest all of the claim limitations.

In the Office Action mailed July 21, 2005, the Examiner rejects claims 19 - 22 under 35 U.S.C. § 103(b) as being unpatentable over the Damaghi patent in view of US Patent Publication US 2002/0151863 A1 filed January 29, 2002 by Toyoshima (herein "the Toyoshima publication"). This rejection is respectfully **traversed**.

The abstract of the Toyoshima Publication reads

The disposable diaper of the present invention has a substantially elongate configuration and comprises a main body having a liquid- permeable topsheet, a liquid-impermeable backsheet, and a liquid- retentive absorbent member interposed between the topsheet and the backsheet and a pair of fastening tapes provided on each side edge of the main body, the waist opening portion and the under-waist portion in the portion having the fastening tapes being provided with a waist elastic member and a plurality of under-waist elastic members, respectively, in the width direction of the diaper, and both longer side portions of the diaper being provided with a pair of leg elastic members, wherein the under-waist elastic members are fixedly disposed in at least areas extending outwardly from each longer side of the absorbent member in their stretched state so as to manifest elastic contractibility but are not disposed in at least the middle of the area where the absorbent member exists, and the under-waist portion has a greater extension stress than the waist opening portion in the width direction of the diaper. (emphasis added)

Independent claim 19 of the present invention includes, *inter alia*, an absorbent core, an outer cover, wherein the absorbent core and the outer cover define a chassis; and a unitary waist elastic element defining a waist elastic element inboard portion and a pair of unitary waist elastic element outboard portions, where the unitary waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article, and where the unitary waist elastic element inboard portion shirrs the front waist region.

The Damaghi patent and the Toyoshima publication, alone or in combination fail to teach or suggest the above referenced element of the present invention. That is, the Damaghi patent and the Toyoshima publication fail to teach or suggest the element of a unitary waist elastic element defining a waist elastic element inboard portion and a pair of unitary waist elastic element outboard portions, where the unitary waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article, and where the unitary waist elastic element inboard portion shirrs the front waist region. As stated above, the Damaghi patent fails to disclose a unitary waist elastic element where the unitary waist elastic element inboard portion shirrs the front waist region. The Toyoshima publication, in the abstract, states that, "the under-waist elastic members are fixedly disposed in at least areas extending outwardly from each longer side of the absorbent member in their stretched state so as to manifest elastic contractibility but are not disposed in at least the middle of the area where the absorbent member exists..." The Toyoshima publication does not disclose a unitary waist elastic element. Further, Toyoshima teaches away from including a unitary elastic element, stating that the under-waist elastic members are not disposed in at least the middle of the area where the absorbent member exists. Thus, the combination of references cited by the Examiner cannot be said to render the claimed invention obvious. For at least this reason, Applicants respectfully submit that claim 19 is patentable over the Damaghi patent in light of the Toyoshima publication and that the rejection should be withdrawn. Moreover, claims 20 - 22 all eventually depend from claim 19; therefore, these claims are also accordingly patentable over the Damaghi patent in view of the Toyoshima publication and the rejection should be withdrawn.

Prior Art Made of Record and Not Relied Upon

Applicants have reviewed the references cited by the Examiner but not relied upon in rejecting the claims. However, Applicants assert the cited references fail to teach or suggest the invention recited in the claims. Accordingly, claims 1-22 are patentable over such references.

In conclusion, and in view of the above amendments and remarks, reexamination, reconsideration and withdrawal of the rejections of claims 1 – 22 under 35 U.S.C. §§ 102 and 103 are respectfully requested. Moreover, it is respectfully submitted that all of the presently presented claims are in condition for allowance and such action is earnestly solicited. If the Examiner has any questions or if there are any remaining issues that can be handled by telephone, the Examiner is invited to contact the undersigned at (920) 721-4558.

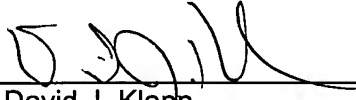
Appl. No. 10/749,908
Amdt. dated November 16, 2005
Reply to Office Action of July 21, 2005

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-4558.

Respectfully submitted,
SUSAN K. BRONK ET AL.

By:



David J. Klar

Registration No.: 46,833

Attorney for Applicant(s)

CERTIFICATE OF TRANSMISSION

I, Barbara D. Miller, hereby certify that on November 16, 2005, this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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